No. 79-1157

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

EDWARD J. ROSEWELL, etc., et al.,

Petitioners,

vs.

LA SALLE NATIONAL BANK, TRUSTEE, etc.,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENT BY COOK COUNTY LEGAL ASSISTANCE FOUNDATION ex rel. FRED SCHUBERT

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The applicant, COOK COUNTY LEGAL ASSISTANCE FOUNDATION, INC., *ex rel.* Fred Schubert, respectfully requests leave to file the accompanying amicus curiae brief. The applicant is a not-for-profit corporation delivering free legal services to low income residents of Cook County. Fred Schubert is an elderly client who as a real property owner received assistance from the Foundation in receiving a refund of excess taxes paid to the petitioner Edward J. Rosewell.

Applicant is in support of the respondent's position. Applicant further points out that neither party has set forth in detail the step-by-step procedure for trying to get real estate tax relief in Cook County. Further neither party has set out the facts or law putting forth the interests of low income single family taxpayers in Cook County.

Such facts and law while not having been presented by either party are vital to low income property owners. Further such facts are very relevant to the main issue of the speed and efficiency of the current limited remedy now available to taxpayers in Cook County, Illinois. The fairness of real estate taxes to those on fixed incomes directly affects their property rights to their most precious possession.

Respectfully submitted,

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BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENT BY COOK COUNTY LEGAL ASSISTANCE FOUNDATION ex rel. FRED SCHUBERT

I.

ISSUE PRESENTED

Are remedies that may be had by real estate taxpayer in courts of Illinois, who reside in Cook County, including state civil rights action premised on 42 U.S.C. §1341, or statutory refund without interest, "plain, speedy and efficient" within meaning of 28 U.S.C. §1341 so as to bar federal injunctive relief from alleged overassessment that is claimed to violate taxpayer's civil rights?

II.

INTEREST OF THE AMICUS PARTY

This brief is submitted in support of the arguments of the taxpayer plaintiff, LaSalle National Bank, and the ruling below. Cook County Legal Assistance Foundation, Inc. is a not-for-profit corporation engaged in the delivery of free legal services to low income residents of Cook County, Illinois. Through its efforts to serve the elderly, the Foundation's Senior Citizens Project staff attorneys represented various owners of real estate in Cook County in efforts to correct overassessments by the Cook County Assessor.

Fred Schubert is an elderly client of the Foundation who litigated the issue of overvaluation and won judgment for a refund of his excessive 1977 property taxes. Mr. Schubert's experience illustrates that the remedies available to a Cook County taxpayer in Illinois courts are anything but "plain, speedy, and efficient." The taxpayer must follow a precise, but tortuous, path just to get to the Illinois court where, if he proves fraud, he will, at some point, get a refund without interest, court costs, or attorney's fees.

Indeed, the current remedy is long, costly, complicated and practically unavailable to an individual taxpayer. Such a system is especially unfair to homeowners on low or fixed incomes unable to secure legal help. Even with legal assistance, the system is arbitrary to the extreme with a virtual void of procedural or due process protections as is explicitly pointed out in "Review of Real Estate Assessments—Cook County v. Remainder of Illinois," 11 *John Marshall Journ. of Practice and Procedure*, 17 (Fall, 1977).

III.

SUMMARY OF ARGUMENT

An owner of real property in Cook County, alone among all other property owners in Illinois, can not seek Administrative Review in the Illinois courts after an administrative denial. The taxpayer must wait and pay the whole excessive tax under protest on a specific form. The taxpayer, to even get to court, then must file specific legal objections within 10 days of a one day notice in a newspaper. Then, after a long court proceeding in which the burden is on the taxpayer, he may get a refund of his excessive taxes without court costs, interests, or attorneys' fees. This is not a plain, speedy and efficient remedy nor should it bar a plaintiff from federal court where there are possible civil rights violations. Such a complex, expensive system is especially unfair to low income and elderly homeowners who pay excessive real estate taxes in Cook County.

IV.

ARGUMENT

A. STATEMENT OF THE CASE OF FRED SCHUBERT.

Fred Schubert, an owner of real property in Cook County, had in 1975 and 1976 appealed to the Cook County Assessor and Board of Appeals for a reduction in his property valuation. He claimed his property was overassessed. In every instance, the County denied his complaint and refused to alter his assessment. The same

complaint was filed on August 11, 1978 with the Cook County Assessor and December 7, 1978 with the Board of Appeals of Cook County in regard to his 1977 tax assessment. These appeals were also denied. In every other county in Illinois, such a taxpayer could have filed an administrative review to the Circuit Court by complaint within 35 days of exhausting the administrative remedies. Unfortunately, only in Cook County is there no immediate judicial review of the administrative decisions available. *White v. Board of Appeals*, 45 Ill.2d 378 (1970). Nor did a petition for a writ of certiorari in the Circuit Court filed on behalf of Mr. Schubert to challenge the administrative decision get a speedy decision as the Circuit Court of Cook County directed the proper remedy was to pay under protest. *Schubert v. Board of Appeals*, (Cir.Ct. of Cook County, Law Division), 78 L 5053 (Sept. 6, 1978).

Therefore, on July 27, 1978, Mr. Schubert paid his taxes in full under protest using the requisite form as is the Illinois statutory remedy at *Ill.Rev.Stat.*, Ch. 120, §§675, 716. Mr. Schubert successfully filed his objection on December 7, 1978, during the statutory 10 day period when objections may be filed. This crucial 10 day period is commenced by one notice in a township paper which had to be scrupulously read by Schubert's attorneys as the required next step for judicial relief. There is no mechanism to get any advance notice as the County sends no notice nor can a taxpayer find out by calling or writing the County.

After all the above prerequisites, Mr. Schubert, after many delays, won a judgment in Cook County, Case 77 Co 172, for a refund of $310.39 out of the $1,253.76 taxes paid for the year 1977. The court found an overassessment of 25%. The County also admitted during the

proceedings in a Request to Admit the lack of notice and lack of any reasons given to taxpayers denied at the administrative level. This judgment will not affect his 1978, 1979, or 1980 taxes and the taxpayer will have to start over each year. A check was issued by the County to Mr. Schubert on March 27, 1980, with no pre- or post-judgment interest, nor costs, nor attorneys' fees. If a taxpayer is late or misses one step (i.e. Board of Appeals, pay tax in full with correct form, find out 10 day objection deadline, file correct objections, overcome burden of proof, win judgment, prepare and get approved judgment order), he will not even get a refund on his own money. *County Treasurer, etc. v. Chicago Title, etc.*, 65 Ill.App.3d 307 (1978).

B. ARGUMENT IN SUPPORT OF RULING IN *LA SALLE NATIONAL BANK v. ROSEWELL*, 604 F.2d 530.

The plaintiff-taxpayer in the case at bar has ably argued in the Seventh Circuit Court of Appeals why the lack of interest combined with the lack of a plain, speedy, and efficient remedy necessitates federal jurisdiction. This amicus brief is made to emphasize that the current limited state remedy in Cook County is very cumbersome and is unusable by an individual taxpayer without an attorney knowledgable in the complex tax review system used only in Cook County. Not only is direct administrative review unavailable in Cook County, but only in Cook County must the taxpayer always show the valuation has been fraudulently made rather than simply erroneous. *People ex rel. Frantz v. M.D.B.K.W.*, 36 Ill.2d 209 (1966). An Illinois court will only review a valuation where the taxpayer can show actual or constructive fraud by the assessing official. *Clarendon Associates v. Korzen*, 56 Ill.2d 101 (1974).

There is no other method available to a taxpayer in Cook County, Illinois except the process outlined above which is long, complex, deficient in due process and places the whole burden on the taxpayer. Also, the taxpayer gets no prospective relief and must each year pay in advance the full amount of questionable tax. Taxpayers can not get injunctive relief, *Chicago Sheraton v. Zabin*, 71 Ill.2d 85 (1978); nor declaratory relief, *Good Year Tire and Rubber Co. v. Tierney*, 411 Ill. 421 (1952).

The individual taxpayer, after going through arbitrary administrative procedures, must pay his full tax under strict statutory requirements. Then, the taxpayer, if he is especially vigilant, must find a one day notice and file the proper legal documents with court costs within 10 days of that publication. Then, after a delay which is often more than two years, the taxpayer must obtain a judgment through settlement or by proving some form of fraud.

The taxpayer can not receive any interest on his excess payment regardless of the delay in refunding the excess or how many times he must go through this procedure. *Clarendon Associates v. Korzen*, 56 Ill.2d 101 (1974). In addition, the taxpayer must pay all his own court costs. Nor is there any provision for attorneys' fees.

Fundamental fairness requires and common sense suggests that the state either have a plain, speedy and efficient remedy or provide interest for the long time period for refunded excess taxes. As the Court of Appeals noted in quoting from the legislative history of 28 U.S.C. §1341, an action for injunctive relief in a federal district court "will not be withdrawn except where there is a plain, speedy and efficient remedy at law or in equity in the courts of the state." *LaSalle*

National Bank v. Rosewell, 604 F.2d 530, 532. No such remedy exists today to protect a Cook County taxpayer. Such a situation is especially onerous to the elderly on fixed incomes who may lose their most precious possession because of today's rising taxes with the lack of any plain method to challenge overassessments. No party has even suggested that 28 U.S.C. §1341 was intended to bar all federal court jurisdiction.

V.

CONCLUSION

The amicus respectfully requests that this Honorable Court affirm the decision of the Court of Appeals in that Cook County now has no plain, speedy, efficient remedy which would raise the bar of 28 U.S.C. §1341 to the complaint of the taxpayer seeking relief from alleged discriminatory assessment practices practiced year after year by the County of Cook.

Respectfully submitted,

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